

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION No 1332 of 1999

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

NAVJIVAN CONSTRUCTION COMPANY
VERSUS
SATISHBHAI BABUBHAI PATEL

Appearance:

MR UNWALA for the Petitioner
MR SI NANAVATY for Respondents

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 09/02/2000

C.A.V. JUDGMENT

1. The plaintiff by this revision application under section 115 of C.P.C., 1908 challenges the order of the

trial court dated 30th March, 1999 under which suo motu it has substituted in place of issues already framed, the issues enumerated therein.

2. Learned counsel for the plaintiff- petitioner contended that the order of the trial court is wholly perverse. The issues have been framed in the suit on the basis of the pleadings of the parties by the court itself on 4th March, 1997. Thereafter, the evidence of both the parties have been recorded and arguments have also been heard. Instead of giving the judgment, at that stage, learned trial court suo motu passed this order which is not permissible to it. It has next been contended that none of the parties to the suit made any grievance that the issues framed in the suit are not proper or that some additional issues are to be framed. Lastly, it is contended that the parties have understood their cases which they have to prove in the suit on the basis of issues framed they lead the evidence and now in view of this order, fresh evidence has to be led. This whole exercise which has been undertaken by the court will go waste.

3. Shri S.I. Nanavaty, learned counsel for the respondents, on the other hand, contended that this revision application is not maintainable as it is not the case decided. It is next contended that Order 14 Rule 5, C.P.C. empowers the trial court to frame the additional issues at any stage of the suit and that what precisely the court did. Lastly, it is contended that the order if allowed to stand will not occasion any failure of justice or will not cause any irreparable injury to the petitioners. In support of his contention, he placed reliance on the decision of the Orissa High Court in the case of Kishorelal vs. Devilal reported in AIR 1971 ORISSA 191 and that of Allahabad High Court in the case of M/s. Kisan Udyog vs. United Bank of India reported in AIR 1990 ALLAHABAD 8.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

5. Shri S.I. Nanavaty, learned counsel for the respondents does not dispute the facts (i) that the issues have been framed earlier by the court with the consent of the parties, (ii) that the defendants have not raised any objection against those issues at any point of time, (iii) that the defendants have produced their evidence on those issues without any objection, and (iv) the evidence has been completed and the arguments have also been made. The defendants have not

raised any objection that the issues are not framed in accordance with the pleadings of the parties.

6. It is a case where the plaintiff has also not raised any objection against the issues framed in the suit. I fail to see any justification in the approach of the learned trial court to substitute the other issues when the issues were framed with the consent of the parties. The parties are the best judge for their cases. They understood their case and they understood the issues which are necessary in the suit and which have been framed and they have not objected at any stage and on the issues they led the evidence. Power under Order 14 Rule 5 C.P.C. may be there with the court to frame the additional issues but it is a case where the learned trial court has not framed any additional issue which it considered necessary to be framed in the suit, but what it did, it has substituted its own issues for those issues which have been framed on the basis of the pleadings of the parties with their consent. It is understandable where an aggrieved party raised an objection against the framing of the issues and make out a case that in case suitable issue is not amended it will cause any prejudice but that is not the case here. Suo motu the court has passed this order and that too at the stage where the arguments have also been completed in the suit. This is not the matter where those issues which have been framed are to be substituted by other issues. Merely because what the court felt that the issues were not framed in accordance with the pleadings of the parties, the parties, at the cost of repetition it is stated, are the best person to know their pleadings and what is their case in their pleadings. In such matters, where none of the parties raised any objection against the framing of the issues, suo motu exercise of power by the court under Rule 5 of Order 14 of C.P.C. is difficult to appreciate. The anxiety of the court should have been to see that where the parties have completed the evidence and also argued the matter, the matter should have been disposed of finally. It is really shocking that in the suit of the year 1987, the court instead of seeing that the matter is disposed of finally, has given fresh life to it and more so when none of the parties has raised any objection against the framing of the issues. The order of the trial court is wholly perverse and it cannot be allowed to stand. The decisions cited by the learned counsel for the respondents are hardly of any help to him in this case. Each case has to be decided on the basis of its own facts. This case certainly falls under clause (c) of subsection (1) of section 115, C.P.C. and in case the

order of the trial court is allowed to stand it will certainly occasion in failure of justice to the petitioner who has to go for fresh trial in the suit of the year 1987.

7. In the result, this civil revision application succeeds and the same is allowed and the order of the court below dated 30th March, 1999 is quashed and set aside. However, in the facts of this case, the parties are directed to bear their own costs of this revision application. Learned trial court is directed to decide the suit finally within a period of one month from the date of receipt of writ of this order. Rule is made absolute accordingly.

zgs/-